

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 13, 2002

D038941 People v. Leyva

D039191 People v. Leyva

The above-entitled appeals are consolidated.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith Haller

Clerk: D. E. Moore

D037578 People v. Renato Salvador Celis

Cause called on merits. Nicholas DePento, Esq. argued for appellant. Denise Crawford, Certified Law Student argued for respondent. Mr. DePento replied for appellant. Cause submitted.

D037623 People v. Leonard Ibarra Mendez

Cause called on merits. Ward Clay, Esq. argued for appellant. Stacy Tyler, Deputy Attorney General argued for respondent. Mr. Clay replied. Cause submitted.

D038059 San Diego County Deputy Sheriffs Association et al. v. County of San Diego et al.

Cause called on merits. Ellen Pilsecker, Deputy County Counsel argued for appellant/cross-respondent. Everett L. Bobbitt, Esq. argued for respondent/cross-appellant. Cause submitted.

Court recessed at 10:29 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Gilbert Nares

D036277 Sylling v. Sylling

Cause called on merits. Steve Temko, Esq. argued for appellant. Ronald J. Lauter, Esq. argued for respondent. Mr. Temko replied. Cause submitted.

Court recessed at 11:09 a.m. until 1:30 p.m.

D039181 Mongiello v. Metretek Technologies, Inc., et al.

Upon written request filed by the appellants the appeal is dismissed.

D033894 Syntron Bioresearch, Inc. v. Fan

The opinion filed April 23, 2002 is modified as follows: 1. Page 4, paragraph 2, line 6, "5080" is changed to "5008." 2. Page 5, paragraph 4, line 5, the word "partial" is added between the words "found" and "copies" so this sentence will read, "They found partial copies of Syntron's production process, with pink highlighting showing how to renumber the steps to disguise the process as that belonging to Genix." There is no change in judgment. The petition for rehearing is denied.

D038914 People v. Patterson

The judgment is affirmed. Benke, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 13, 2002 (Continued)

D038133 People v. Lindsay

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D037659 Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc., et al.

The judgment is reversed and remanded with directions to enter an order denying Fil-Cartoons's motion to quash with prejudice, and denying Fantasia Philippines's and FAN's motions to quash without prejudice. VMA shall recover costs on appeal. McDonald, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D039194 In re I.L. a Juvenile

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Haller, J.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller

Clerk: D. E. Moore

D036538 People v. Bruce M. Fowler

Cause called on merits. Marianne Harguindeguy, Esq. argued for appellant. Mike Murphy, Deputy Attorney General argued for respondent. Ms. Harguindeguy replied. Cause submitted.

D035947 Smith v. San Dieguito Union High School District et al.

Cause called on merits. Jeffrey A. Miller, Esq. argued for appellant. David Kipper, Esq. argued for respondent, San Dieguito Union High School District. John B. Campbell, Esq. argued for respondent, Torrey Pines High School Foundation. Mr. Miller replied. Cause submitted.

Court recessed at 2:45 p.m. until Tuesday, May 14, 2002 at 9 a.m.

D039962 Gonzalez et al. v. City of National City et al.

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 14, 2002

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. E. Moore

D037525 Leary v. Progressive West Insurance Company

Cause called on merits. Stephen F. Lopez, Esq. argued for appellant. Patrick M. Howe, Esq. argued for respondent. Cause submitted.

D037812 San Diego Police Officers Association v. City of San Diego et al.

Cause called on merits. David Brodie, Deputy City Attorney argued for appellant. Everett Bobbitt, Esq. argued for respondent. Mr. Brodie replied. Cause submitted.

Court recessed at 9:25 a.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D037493 Anacker v. City of San Diego

Cause called on merits. Edward L. Faunce, Esq. argued for appellant. Leslie J. Girard, Deputy City Attorney argued for respondent. Mr. Faunce replied. Cause submitted.

Court recessed at 10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre
Clerk: D. E. Moore

D037760 Antorietto v. Regents of the University of California et al.

Cause called on merits. Richard A. Higgins, Esq. argued for appellant. Lysha N. Weston, Esq. argued for respondent. Mr. Higgins replied. Cause submitted.

Court recessed at 1:46 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

D036193) Syntron Bioresearch v. Fan

D036669) Syntron Bioresearch v. Genix Biotek et al.

Cause called on merits. William K. Pratt, Esq. argued for appellant, Pratt. Helen Simkins Irza, Esq. argued for respondent, Syntron. Mr. Pratt replied. Cause submitted.

Court recessed at 2:27 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith Haller

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 14, 2002 (Continued)

D037034 Bravo v. Ismaj et al.

Cause called on merits. Victor J. Bravo, argued for appellant in pro per. John Morris, Esq. argued for respondent, Cigna Dental Health. George E. Fleming, Esq. argued for respondent, Ismaj. Mr. Bravo replied. Cause submitted.

Court recessed at 2:45 p.m. until Wednesday, May 15, 2002 at 9:00 a.m.

D039755 David N. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner David N. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D039734 Barbara T. v Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Barbara T.. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D037638 Marriage of Nehk

That part of the order denying Angel's request to set child support arrears based in part on Nehk's stock options is reversed and remanded for further proceedings consistent with this opinion. In all other respects, the order is affirmed. Angel is awarded her costs on appeal. Huffman, J.;
We Concur: Kremer, P.J., Nares, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 15, 2002

D039905 Lisa R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Lisa R. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

Clerk: D. E. Moore

D038051 Park Medical Pharmacy v. San Diego Orthopaedic Associates Medical Group, Inc.

Cause called on merits. John Cronin, Esq. argued for appellant. Susanne C. Washington, Esq. argued for respondent. Mr. Cronin replied. Cause submitted.

Court recessed at 9:22 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Alex McDonald

D035156 Chew et al. v. Tinseltown Video, Inc., et al.

Cause called on merits. Susan Oliver, Esq. argued for appellant. David A. Niddrie, Esq. argued for respondent. Scott Hunter Ross, Esq. was present in oral argument for respondent, but did not argue. Ms. Oliver replied. Cause submitted.

Court recessed at 9:50 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D035486 McMeans et al. v. ScrippsHealth

Cause called on merits. Deborah Giles, Esq. argued for respondent, ScrippsHealth. Barry Landsberg, Esq. argued for amicus curiae, Catholic Healthcare West. Sheldon A. Ostroff, Esq. argued for appellant. Ms. Giles replied. Cause submitted.

Court recessed at 11:16 a.m. until 1:30 p.m.

D037619 People v. Garcia

The judgment is modified by dismissing the strike and replacing the two-year eight-month sentence with a sentence of one-year four- months (one-third the middle term), to be served consecutively to the sentence in case No. SCD148432. As so modified, the judgment is affirmed. The trial court is directed to amend its abstract of judgment and forward a copy of the amended abstract to the Department of Corrections. Nares, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D039229 In re Alfonso B., a Juvenile

The petition for rehearing is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 15, 2002 (Continued)

D037185 People v. Terry

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

D038573 People v. Hassan

Judgment affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D038603 People v. Lloyd

The judgment is affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., Haller, J.

D037669 People v. Buhain, Jr.

The duplicate minute order dated December 28, 2000, is ordered amended to reflect that appellant was convicted of elder theft (sec. 368, subd. (d)) and grand theft. The conviction for grand theft and the true finding on the section 12022.6, subdivision (a)(1), enhancement are reversed. (See fn. 4, ante.) In all other respects, the judgment is affirmed. Benke, J.; We Concur: Kremer, P.J., Huffman, J.

D037665 Roberson, Sr. v. San Diego Unified School District

The judgment is reversed. The District to bear costs on appeal. O'Rourke, J.; We Concur: Haller, Acting P. J., McDonald, J.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

Clerk: D. E. Moore

D037886 J. G. Wentworth SSC Limited v. McMullen

Cause called on merits. James Richard Felton, Esq. argued for appellant. Clarence Michael Balingit, Esq. argued for respondent. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

D037375 Satten v. Webb et al.

Cause called on merits. Dean T. Kirby, Esq. argued for appellant. G. William Van De Weghe, Jr., Esq. argued for respondent. Mr. Kirby replied. Cause submitted.

Court recessed at 2:34 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

D037289 Murphy v. Worldcom, Inc.

Cause called on merits. Jon D. Meer, Esq. argued for appellant. Gregory James Stuman, Esq. argued for respondent. Mr. Meer replied. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

May 15, 2002 (Continued)

Court recessed at 3:01 to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D038278 National Notary Association v. U. S. Notary et al.

Cause called on merits. Greg A. McAtee, Esq. argued for appellant. William J. Brutocao, Esq. argued for respondent. Mr. McAtee replied. Cause submitted.

Court recessed at 3:27 p.m. until Thursday, May 16, 2002 at 9 a.m.

D038146 Salerno v. Board of Retirement of the San Diego County Employees Retirement Association

The judgment is affirmed. Haller, J.; We Concur: Benke, Acting P.J., Huffman, J.

D039788 In re Galvez on Habeas Corpus

The petition is denied.

D036193 Syntron Bioresearch, Inc. v. Fan

D036669 Syntron Bioresearch, Inc. v. Genix Biotek, Inc., et al./Pratt

(Consolidated) The orders are affirmed. As sanctions for their frivolous appeals, Fan and Pratt shall each pay \$15,000 to counsel for Syntron. Syntron shall also recover costs on both appeals. A copy of this opinion shall be forwarded to the State Bar of California. (Bus. & Prof. Code, § 6086.7, subd. (c).) Huffman, J.; We Concur: Kremer, P.J., McIntyre, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 16, 2002

D037416 People v. Scott

The judgment is affirmed. CERTIFIED FOR PUBLICATION. Huffman, J.; We Concur: Kremer, P.J., Benke, J.

Court convened at 9 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

Clerk: D. E. Moore

D038284 People v. Roger Cortez

Cause called on merits. Elliott N. Kanter, Esq. argued for appellant. Matthew Mulford, Deputy Attorney General argued for respondent. Mr. Kanter replied. Cause submitted.

D038378 City of San Diego v. "F" Street Corporation

Cause called on merits. A. P. Zmurkiewicz, Esq. argued for appellant. James M. Chapin, Deputy City Attorney argued for respondent. Mr. Zmurkiewicz replied. Cause submitted.

D037446 Strickland v. Strickland

Cause called on merits. James Thomas Bentson, Esq. argued for appellant. Judith E. Klein, Esq. argued for respondent. Mr. Bentson replied. Cause submitted.

D036222 Robell et al. v. Provenzano et al.

Cause called on merits. William L. Conti, Esq. argued for appellant. Kurt W. Hallock, Esq. argued for respondent. Mr. Conti replied. Cause submitted.

D038277 Don Prudhomme Racing, Inc. v. Wynn Oil Company

Cause called on merits. Tom Freeman, Esq. argued for appellant. Richard G. Howard, Esq. argued for respondent. Mr. Freeman replied. Cause submitted.

Court recessed at 10:25 a.m. until 1:30 p.m.

D038993 In re Victor T., a Juvenile.

The order is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

D038745 People v. Bell

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., Haller, J.

D040095 In re Jason P. et al., Juveniles

The notice of appeal filed May 8, 2002 is dismissed as untimely.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 16, 2002 (Continued)

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. E. Moore

D038266 Atlantic Mutual Insurance Company v. Chromium Graphics, Inc.

Cause called on merits. Gwen Freeman, Esq. argued for appellant. Peter Villar, Esq. argued for respondent. Ms. Freeman replied. Cause submitted.

Court recessed at 1:46 p.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

D038301 Keating et al. v. San Diego Civil Service Commission et al.

Cause called on merits. Everett L. Bobbitt, Esq. argued for appellant. James Chapin, Deputy City Attorney argued for respondent. Mr. Bobbitt replied. Cause submitted.

D037667 Christopherhill Development, Inc. v. Balcors/Santa Fe Valley Venture et al.

Cause called on merits. Don McKillop, Esq. argued for appellant. David J. Reed, Esq. argued for respondent. Mr. McKillop replied. Cause submitted.

D038047 Ord et al. v. Regents of the University of California

Cause called on merits. Penelope A. Phillips, Esq. argued for appellant. Alison M. Turner, Esq. argued for respondent. Ms. Phillips replied. Cause submitted.

D037595 Pelayo v. Pacific Maritime Association

Cause called on merits. Robert A. Waller, Jr. Esq., argued for appellant. David A. Cathcart, Esq. argued for respondent. Mr. Waller replied. Cause submitted.

Court recessed at 3:21 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Judith McConnell

D037594 People v. Tommy Kim Russell

Cause called on merits. Pamela G. Lacher, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Ms. Lacher replied. Cause submitted.

Court recessed at 3:59 p.m. until Friday, May 17, 2002 at 9 a.m.

D038275 Lopez v. Casa Suenos De Oro et al.

The judgment is affirmed. McIntyre, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D036275 Blackburn et al. v. Lanser

The judgment is affirmed. Blackburn is awarded his costs of appeal, although his request for sanctions is denied. McIntyre, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 16, 2002 (Continued)

D040002 USAA v. Superior Court, County of San Diego/Daun
The petition is denied.

D040059 Hartz v. Superior Court of San Diego County/People
The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 17, 2002

**D040116 Financial Asset Management Services v. Superior Court of San Diego
County/Panther**
The petition is denied.

Court convened at 9 a.m.

Present: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices
Terry O'Rourke and Judith McConnell
Clerk: D. E. Moore

D038393 In re Angelica B., a Juvenile
Cause called on merits. Michael J. Messina, Esq. argued for appellant. Scott Taylor, Deputy Attorney
General argued for respondent. Mr. Messina replied. Cause submitted.

D037151) Pacific Millennium Trading Corp. v. Colliers Iliff Thorn, a Corporation, et al.
D037741) Pacific Millennium Trading Corporation v. Colliers Iliff Thorn et al.
Cause called on merits. Neil Roger Gunny, Esq. argued for appellant. Andrew A. Kurz, Esq. argued for
respondent. Mr. Gunny replied. Cause submitted.

D035911 Kraffert v. J. F. Shea Company, Inc.
Cause called on merits. No appearance by appellant's counsel for Kraffert. Michael W. Quade, Esq.
argued for appellant, J. F. Shea Company, Inc. Cause submitted.

D036282 People v. Guerrero
Cause called on merits. Diane Nichols, Esq. argued for appellant. Scott Taylor, Deputy Attorney General
argued for respondent. Ms. Nichols replied. Cause submitted.

D036980 Rancho Viejo, LLC v. Tres Amigos Viejos, LLC
Cause called on merits. James Bell Gilpin, Esq. argued for appellant. Stephen V. Lopardo, Esq. argued
for respondent. Mr. Gilpin replied. Cause submitted.

Court recessed at 10:24 a.m. until 1:30 p.m.

D040096 Blosh v. Superior Court of San Diego County/Blosh
The petition is denied.

D039010 Lunde v. Superior Court of San Diego County/McMillin, Jr. et al.
Let a writ of mandate issue directing the Superior Court of San Diego County to vacate the portion of its
order of October 16, 2001, granting summary adjudication of general damages due to Peyronie's disease
on the court's own motion and to enter an order denying summary adjudication of those damages. The
stay issued by this court on January 17, 2002 is vacated. O'Rourke, J.; We Concur: Kremer, P. J.,
McIntyre, J.

D036118 People v. McIntosh
The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Nares, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 17, 2002 (Continued)

D037781 People v. Lopez

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D038963 Prospect Square, LLC, v. Aes Jewelry, Inc.,

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a).
The appeal is dismissed.

D038983 People v. Godoy

Judgment affirmed. Huffman, J.; We Concur: Kremer, P.J., Benke, J.

D039500 People v. Snowden

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 38).

D040128 Jennings v. Superior Court of San Diego County/Palomar Pomerado Health Systems et al.

The petition is denied.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices
Alex McDonald and Judith McConnell

Clerk: D. E. Moore

D037957 Flanders v. Gilbert

Cause called on merits. Wesley R. Thompson, Esq. argued for appellant. John J. Murphy, Esq. argued for respondent. Mr. Thompson replied. Cause submitted.

D037914 People v. Wenzel

Cause called on merits. Chuck Sevilla, Esq. argued for appellant. Charles Ragland, Deputy Attorney General argued for respondent. Mr. Sevilla replied. Cause submitted.

D036784 Sammis et al. v. Brobeck, Phleger & Harrison

Cause called on merits. Richard H. Benes, Esq. argued for appellant. Manuel R. Ramos, Esq. was present in oral argument for appellant, but did not argue. Marcelle E. Mihaila, Esq. argued for respondent. Mr. Benes replied. Cause submitted.

D037590 Palestini et al. v. General Dynamics Corporation et al.

Cause called on merits. Laura G. Schaefer, Esq. argued for appellant. Debra Back, Esq. was present in oral argument with Ms. Schaefer, but did not argue. Erik S. Bliss, Esq. argued for respondent, Hughes Missiles. Charles Bird, Esq. argued for respondent, General Dynamics. Ms. Schaefer replied. Cause submitted.

Court adjourned at 3:15 p.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 17, 2002 (Continued)

D040071 In re Townsend on Habeas Corpus
The petition is denied.